

E-Filed 5/27/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHN A. HEMSLEY,

No. C 10-1841 RS (PR)

Plaintiff,

**ORDER OF SERVICE AND PARTIAL
DISMISSAL;**

v.

**DIRECTING DEFENDANTS TO FILE
DISPOSITIVE MOTION OR NOTICE
REGARDING SUCH MOTION;**

SANTA RITA COUNTY JAIL, and
CAMPOS,

Defendants.

INSTRUCTIONS TO CLERK

This is a federal civil rights action filed pursuant to 28 U.S.C. § 1983 by a *pro se* state prisoner against a medical staff person at the Santa Rita Jail Medical in Alameda County in which it is alleged that defendant provided constitutionally inadequate medical care to plaintiff. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or

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1 any portion of it, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b). Pro se pleadings must nonetheless be liberally construed. *Balistreri*
4 *v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
6 a right secured by the Constitution or laws of the United States was violated, and (2) that the
7 alleged violation was committed by a person acting under the color of state law. *West v.*
8 *Atkins*, 487 U.S. 42, 48 (1988).

9 **B. Legal Claims**

10 Plaintiff alleges in his first claim that defendant Campos, a female member of the
11 medical staff at Santa Rita Jail, violated plaintiff’s Eighth Amendment rights by failing to
12 treat plaintiff’s ailing eye properly. According to plaintiff, defendant misdiagnosed
13 plaintiff’s eye ailment as a result of sickle cell anemia, and refused to give any treatment,
14 causing plaintiff to go blind. In a second, and unrelated, claim, plaintiff alleges that medical
15 staff, presumably at Santa Rita Jail, failed to give him blood transfusions after plaintiff had
16 received a gunshot, or send him to an outside hospital for other treatment, resulting in
17 plaintiff suffering strokes and irreparable harm. Liberally construed, plaintiff’s first claim is
18 cognizable under § 1983.

19 Plaintiff’s second claim is DISMISSED without prejudice because it is not related to
20 the first claim. A plaintiff may properly join as many claims as he has against an opposing
21 party. Fed. R. Civ. P. 18(a). Nevertheless, while multiple claims against a single party may
22 be alleged in a single complaint, unrelated claims against different defendants must be
23 alleged in separate complaints. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)
24 (finding, under Rule 18(a), prisoner improperly brought complaint raising fifty distinct
25 claims against twenty-four defendants). Further, parties may be joined as defendants only if
26 “there is asserted against them jointly, severally, or in the alternative, any right to relief in
27 respect of or arising out of the same transaction, occurrence, or series of transactions or
28

occurrences and if any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a). As a practical matter, this means that claims involving different parties cannot be joined together in one complaint if the facts giving rise to the claims were not factually related in some way — that is, if there was not “similarity in the factual background of a claim.” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). General allegations are not sufficient to constitute similarity when the specifics are different. *Id.* The court, on its own initiative, may dismiss misjoined parties from an action, and any claim against a misjoined party may be severed and proceed with separately. Fed. R. Civ. P. 21. Plaintiff’s second claim is DISMISSED without prejudice on grounds that such claim is entirely unrelated to the first claim. If plaintiff seeks relief for the second claim, he must file a separate action.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The Clerk of the Court shall issue summons and the United States Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter, all attachments thereto, and a copy of this order upon the Santa Rita County Jail and upon Campos at the Santa Rita Jail in Alameda County. The Clerk shall also mail courtesy copies of the complaint and this order to the California Attorney General’s Office.

3. No later than ninety (90) days from the date of this order, defendants shall file a motion for summary judgment or other dispositive motion with respect to the claims in the amended complaint found to be cognizable above.

a. If defendants elect to file a motion to dismiss on the grounds plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), defendants shall do so in an unenumerated Rule 12(b) motion pursuant to *Wyatt v. Terhune*, 315 F.3d 1108, 1119–20 (9th Cir. 2003), cert. denied *Alameida v. Terhune*, 540 U.S. 810 (2003).

1 b. Any motion for summary judgment shall be supported by adequate
2 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
3 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
4 qualified immunity found, if material facts are in dispute. If any defendant is of the opinion
5 that this case cannot be resolved by summary judgment, he shall so inform the Court prior to
6 the date the summary judgment motion is due.

7 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
8 served on defendants no later than forty-five (45) days from the date defendants' motion is
9 filed.

10 a. In the event the defendants file an unenumerated motion to dismiss
11 under Rule 12(b), plaintiff is hereby cautioned as follows:

12 The defendants have made a motion to dismiss pursuant to Rule 12(b) of the
13 Federal Rules of Civil Procedure, on the ground you have not exhausted your administrative
14 remedies. The motion will, if granted, result in the dismissal of your case. When a party you
15 are suing makes a motion to dismiss for failure to exhaust, and that motion is properly
16 supported by declarations (or other sworn testimony) and/or documents, you may not simply
17 rely on what your complaint says. Instead, you must set out specific facts in declarations,
18 depositions, answers to interrogatories, or documents, that contradict the facts shown in the
19 defendant's declarations and documents and show that you have in fact exhausted your
20 claims. If you do not submit your own evidence in opposition, the motion to dismiss, if
21 appropriate, may be granted and the case dismissed.

22 b. In the event defendants file a motion for summary judgment,
23 the Ninth Circuit has held that the following notice should be given to plaintiffs:

24 The defendants have made a motion for summary judgment by which they
25 seek to have your case dismissed. A motion for summary judgment under Rule 56 of the
26 Federal Rules of Civil Procedure will, if granted, end your case.

1 Rule 56 tells you what you must do in order to oppose a motion for summary
2 judgment. Generally, summary judgment must be granted when there is no genuine issue of
3 material fact — that is, if there is no real dispute about any fact that would affect the result
4 of your case, the party who asked for summary judgment is entitled to judgment as a matter
5 of law, which will end your case. When a party you are suing makes a motion for summary
6 judgment that is properly supported by declarations (or other sworn testimony), you cannot
7 simply rely on what your complaint says. Instead, you must set out specific facts in
8 declarations, depositions, answers to interrogatories, or authenticated documents, as provided
9 in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents
10 and show that there is a genuine issue of material fact for trial. If you do not submit your
11 own evidence in opposition, summary judgment, if appropriate, may be entered against you.
12 If summary judgment is granted in favor of defendants, your case will be dismissed and there
13 will be no trial. *See Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff
14 is advised to read Rule 56 of the Federal Rules of Civil Procedure and *Celotex Corp. v.*
15 *Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment must come forward
16 with evidence showing triable issues of material fact on every essential element of his claim).
17 Plaintiff is cautioned that failure to file an opposition to defendants' motion for summary
18 judgment may be deemed to be a consent by plaintiff to the granting of the motion, and
19 granting of judgment against plaintiff without a trial. *See Ghazali v. Moran*, 46 F.3d 52,
20 53-54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

21 5. Defendants shall file a reply brief no later than fifteen (15) days after plaintiff's
22 opposition is filed.

23 6. The motion shall be deemed submitted as of the date the reply brief is due. No
24 hearing will be held on the motion unless the Court so orders at a later date.

25 7. All communications by the plaintiff with the Court must be served on
26 defendants, or defendants' counsel once counsel has been designated, by mailing a true copy
27 of the document to defendants or defendants' counsel.
28


1 8. Discovery may be taken in accordance with the Federal Rules of Civil
2 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
3 Rule 16-1 is required before the parties may conduct discovery.

4 9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
5 court informed of any change of address and must comply with the court's orders in a timely
6 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
7 pursuant to Federal Rule of Civil Procedure 41(b).

8 10. Extensions of time must be filed no later than the deadline sought to be
9 extended and must be accompanied by a showing of good cause.

10 **IT IS SO ORDERED.**

11 DATED: May 27, 2010


RICHARD SEEBORG
United States District Judge

United States District Court
For the Northern District of California